BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

REQUEST FOR CLARIFICATION

Case No. 16716: The Nebraska Avenue Neighborhood Association's Appeal of the Zoning Administrator's Decision to Issue Permit No. B435464.

On July 9 and 13, 2001, the Nebraska Avenue Neighborhood Association (NANA) received information from Sunrise Assisted Living LLC (Sunrise) regarding Case No. 16716. In their information, Sunrise states that they are a Party in this case by virtue of owning all the property for which the Zoning Administrator's decision is being appealed.

In June, Mr. Bennett, Corporation Council representing DCRA, stated to NANA representatives that Sunrise was an intervenor in this case.
At the time submitted an alley-closing application, Sunrise had purchased two parcels, Lots 5'' and 161 in Square 1989. Tax records on July 13, 2001 show that Sunrise Assisted Living of Connecticut Avenue currently owns two parcels in the subject development. The majority property owners are Louis and Sunny Reyes, the holders of the building permit.

Sunrise has submitted the name of Stephen Ruiz as an "expert witness." We note, however, that Mr. Ruiz has acted as an agent and for Mr. and Mrs. Reyes. Among his activities, Mr. Ruiz submitted the Environmental Impact Screening Form for the Reyes application. We have pointed out substantial errors reported on this form.

We request clarification on the status of Sunrise (party of intervenor). We also see a conflict of interest for Mr. Ruiz and request that he not be considered an "expert witness" while also acting as an agent for the holders of the permit under appeal.

Thank you.

Page Chiapella, President
Martha Thompson, Vice President
Nebraska Avenue Neighborhood Association

BZA
Case No. 16716
Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO.16716
EXHIBIT NO.36

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

MOTION FOR PARTICIPATION OF FOUR BOARD MEMBERS

Case No. 16716: The Nebraska Avenue Neighborhood
Association's Appeal of the Zoning Administrator's
Decision to Issue Permit No. B435464.

The Nebraska Avenue Neighborhood Association requests that the Board Of Zoning Adjustment (BZA) include four Members of the Board in the panel which will hear Case No. 16716. The Association would be willing to accept a delay, if necessary, to allow four members to participate.

The reason for this motion is that the BZA is a five member Board (11 DCMR Sec. 3101.1). The concurring vote of at least a full majority of the members of the Board shall be necessary for any decision (11 DCMR Sec. 3125.2). Recusal or absence of voting members deprives the Appellant of opportunity to obtain a favorable vote from those absent members. In addition to their vote, members contribute positively to the process itself by their experience and discussion.

Of the 5 member BZA, one has been recused. Therefore, of the remaining 4 votes, 75% is required to win the appeal. If there should be only 3 voting members, 100% would be required, thereby raising the bar by an additional 25%.

We ask you allow no less than a 4-member voting Board.

We agree to withdraw this motion if there are four BZA Members available to hear the appeal on July 17, 2001.

Page Chiapella, President
Martha Thompson, Vice President
Nebraska Avenue Neighborhood Association

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

REQUEST TO STRIKE FROM THE RECORD

Case No. 16716: The Nebraska Avenue Neighborhood Association Appeal of the Zoning Administrator's Decision to Issue Permit No. B435464.

Sunrise Assisted Living LLC, in their statement dated July 12, 2001, asserts: "as the Office of the Corporation Council has determined, the setdown rule is inapplicable in the subject situation because the building permit application was filed before the downzoning was setdown for hearing. The setdown rule simply does not apply." (page 8)

A meeting was held June 18, 2001 with DCRA, Director David Clark and DCRA staff Denzil Noble and Toye Bello, the Nebraska Avenue Neighborhood Association (NANA)representatives and ANC 3G commissioners. At that meeting ANC Commissioner Marilyn Holmes asked to see the Corporation Council's opinion mentioned above. The opinion apparently addressed 11 DCMR Sec. 3202.5 and responded to a question from DCRA relating to processing of an application and completion of work pursuant to the permit when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction. Mr. Clark's response at the meeting was that DCRA would not share that information with NANA and ANC 3G. Marilyn Holmes asked if that information might be included during the BZA appeal (No. 16716) process. Mr. Clark said it would not. I followed up with an email to confirm Mr. Clarks's statement that the information would not be included in the BZA process. Mr. Clark confirmed by email (attached).

The Sunrise response mentioned above indicates that DCRA has shared the referenced Corporation Council opinion with Sunrise representatives. Sunrise is using that opinion to claim vesting of their permit.

Any sharing of information with Sunrise of material that was withheld from the appellants (NANA and ANC 3G) obviously puts the appellants at a disadvantage. We request that the material presented by Sunrise referencing the Corporation Council opinion be stricken from the record.

Thank you for your attention to this matter.

Page Chiapella, President
Martha Thompson, Vice President
Nebraska Avenue Neighborhood Association

cc: Anthony Williams
David Clark
Kathy Patterson
Eric Foster
Marilyn Holmes